PUBLIC PROSECUTOR

v.

LOH YOON SEONG

HIGH COURT, SINGAPORE
TS SINNATHURAY J
M KARTHIGESU JC
[CRIMINAL CASE NO. 43 OF 1989]
10 JULY 1990

CRIMINAL PROCEDURE: *Murder - In furtherance of a common intention - Victim's defensive wounds - Fatal wounds - Whether accused's statement admissible - Whether charges and notice of warning had been explained to the accused - Criminal Procedure Code [Sing], ss. 122(5), 122(6).*

EVIDENCE: *Whether recorded statement tainted by irregularity - Inducement, threat or promise.*

The accused was charged, together with an unknown person still at large, and in furtherance of a common intention, with the offence of murder. In the course of police investigation, statements were recorded from the accused on four occasions in which he admitted attacking the deceased with a parang. He said that he had gone to see the deceased with one Tan See Hoon in order to teach the deceased "a lesson". He was then armed with a parang whilst the other assailant had a knife.

The issue before the Court was whether these statements made by the accused to the police during the investigation were voluntary. The accused alleged that the charges and the notice of warning had not been explained to him.

Held:

[1] The statements given by the accused were voluntarily made.

[2] In these statements the accused admitted to having taken part in the attack on the deceased which resulted in the deceased's death.

[3] The Court is satisfied beyond reasonable doubt that the accused, together with the other person still at large had inflicted the fatal wounds on the deceased. These injuries were sufficient in the ordinary course of nature to cause the death of the deceased and did in fact do so.

[Accused convicted.]

Case referred to:
PP v. Chan Sway Beng [1988] 2 MLJ 405

Legislation referred to:
Criminal Procedure Code [Sing], s. 122(5), (6)

For the public prosecutor - Seng Kwang Boon
For the accused - Tan Chin Siong

JUDGMENT

TS Sinnathuray J, M Karthigesu JC:

Loh Yoon Seong (the accused) is charged that on or about 14 November 1985 at about 12.48 a.m. at South East Asia Hotel, No. 190 Waterloo Street, Singapore, together with an unknown person, and in furtherance of the common intention of them both, he committed murder by causing the death of one Nurdin Nguan Song (the deceased).

The deceased was an Indonesian National. He was a fish merchant, a business which he carried on in Singapore. On 5 November 1985 he left Tanjong Pinang, Indonesia, for Singapore in connection with his business. His second wife, Heng Eng Boon (PW2) ("Heng") came to Singapore from Tanjong Pinang with her sister on 12 November 1985 to seek medical treatment. They stayed with friends. Soon after her arrival in Singapore, Heng left a message for the deceased of her arrival in Singapore with the deceased's business associates. They met on the morning of 13 November and checked into the South East Asia Hotel in Waterloo Street at about noon. They were given room 78.

After an evening's outing on 13th the deceased and Heng returned to their room at the South East Asia Hotel at about 10.30 p.m. They were preparing for bed. The room lights had been switched off. Sometime after 11pm (Heng's assessment) there was a knock on the door. The deceased inquired who it was in the Teochew dialect. A male voice answered in the same dialect that he was bringing water to the room. The deceased went to the door signalling to Heng to keep silent and opened the door slightly ajar to see who it was. Heng was right behind the deceased. The room was still in darkness. Two males burst through the door rushing towards the deceased who staggered backwards through the force of their entry. Heng was sheltered by the door. The two males set upon the deceased striking him with something they held in their hands. The deceased warded off these blows with both his hands and screamed in pain.

At an opportune moment Heng slipped out of the room and ran along the corridor and down the steps from the fourth floor where room 78 was shouting "robbery" and that her husband was being assaulted in the Teochew dialect until she reached the lobby on the ground floor. At the lobby she entered the restaurant where there were some men although the restaurant was not open for business and screamed out that her husband was being severely assaulted. Some of the men in the restaurant ran out. She remained in the restaurant.

Lim Dee Seng (PW3) ("Lim") the assistant manager of the South East Asia Hotel and two friends were in the restaurant off the lobby chatting together from about 10.55 p.m. that day. About midnight (Lim's assessment) the hotel keeper came into the restaurant through a side door to remark about the noise from upstairs. Lim left the restaurant by the same side door to investigate when he saw a Chinese woman wearing a blue dress (later identified as Heng) standing near the door of the restaurant crying and shouting robbery upstairs. At the same moment he saw two men running down the stairs and out of the main door of the hotel. One of them was carrying a bag slung over his left shoulder. Lim gave chase.

Just outside the hotel he managed to grab hold of one of the men by the jacket and they both fell to the ground. The man got something out of the bag he was carrying which resembled a wood about 2 feet long with which he assaulted Lim on the head and upper arm. When they broke off after the tussle the man made his escape into a nearby HDB estate opposite the hotel leaving his bag behind whilst Lim returned to the hotel bleeding.

When Lim entered the hotel he saw the deceased seated on a sofa in the lobby in front of the reception counter. The deceased was bare bodied clad in a pair of blue shorts. His whole body was covered with blood and he was being attended to by a European lady doctor who was a guest at the hotel. Heng was seated beside the deceased. Lim joined them on the sofa.

An ambulance arrived at the hotel at about 12.23am. The deceased and Lim accompanied by Heng were taken to Singapore General Hospital. Lim was warded at the hospital for treatment. The deceased who was unconscious when the ambulance arrived and was gasping for breath was given oxygen on the way to the hospital. On arrival at the hospital at about 12.30 a.m. the deceased was rushed to the resuscitation room for treatment but to no avail. The deceased was pronounced dead at 12.48 a.m. on 14 November 1985 by the medical officer on duty.

Dr. Wee Keng Poh (PW1) (Dr. Wee) a Consultant Forensic Pathologist attached to the Singapore General Hospital performed an autopsy on the deceased on 14 November 1985 at 9am. His autopsy report was admitted in evidence as P37. The deceased was identified to Dr. Wee by Sgt. 1965, Soh Teck Seng of Beach Road Police Station who arrived at the scene of the murder at the South East Asia Hotel at about 12.55 a.m. and took charge.

Dr. Wee described that he found 9 slash wounds on the deceased's head, chest, abdomen and upper limbs. These wounds were consistent with having been caused by a sharp cutting instrument like a parang. The wounds on the upper limbs were defensive wounds in the sense that the deceased had sustained them trying to ward off the attack. Of particular significance was the slash wound on the deceased's left forearm which had cut off a flap of the skin measuring 11 x 7 cm and exposing the cut flexor tendons. The slash wound on the right rear of the head near the right ear had sliced off the scalp measuring 6 x 8 cm.

In addition to these Dr. Wee found 4 traingular shaped stab wounds on the deceased's chest and abdomen. He considered the stab wound near the left nipple which had punctured the whole of the chest wall and entered the right side of the heart to be the fatal wound. This wound was caused by a sharp pointed instrument which is triangular on cross-section like a baring scrapper or a sharp pointed three sided metal file. The attack was a frontal attack and in Dr. Wee's opinion, aimed at the heart. It had a downward thrust. Dr. Wee further stated that in his view the deceased must have been standing when he received this injury.

Equally fatal was the stab wound on the deceased's abdomen on the left side which had penetrated through the thickness of the abdominal wall just below the left rib cage and cut into the left kidney. This wound too was caused by the same kind of instrument which had caused the chest wound described above.

Dr. Wee certified the cause of death of the deceased as "haemorrhage due to stab wound of heart". He was of the opinion that even if the deceased had not rushed down four floors from his room to the lobby he would still have died from these injuries as his heart was damaged and he was bleeding profusely. Even if the deceased had been rushed to the hospital within ten minutes of sustaining these injuries he would not have survived. Furthermore the slash wounds by themselves were sufficient to have caused death if not attended to but when taken together with the stab wounds death was inevitable.

The police immediately on arrival at the scene of the murder at South East Asia Hotel had taken custody of the brown bag which was left behind by the man with whom Lim had scuffled outside the hotel on the road. This bag and its contents were produced at the trial and admitted in evidence. With the aid of the brown bag (P46) and some of its contents such as the TMT measuring tape (P54) which was distinctively marked with an arrow and

the number 9580 cut-in, a Jurong Shipyard Pass No. 3189 (P47) a Atari Engineering Company Pass No. 14 (P48) a roll of fishing reel (P59) and a roll of "Jupiter" tape (P60), the brown bag (P46) was traced to the accused. This evidence is not here rehearsed as none of it was challenged by defence Counsel.

The police also recovered a parang (P69) which was found behind a block of HDB flats situated opposite the hotel.

The accused was arrested in Kuala Lumpur on 26 January 1988. He was brought back to Singapore by Sgt. Tan Ban Huat (PW11) (Sgt. Tan) of the Special Investigation Section of the CID on 28 January 1988. On arrival at Changi Airport at about 2.05 p.m. the accused was informed by Sgt. Tan that he had been arrested for the murder of the deceased. He was immediately taken from Changi Airport to the CID and placed in the lock up at about 2.45 p.m.

The Admissibility of Statements made by the Accused

The prosecution sought to admit in evidence four statements made by the accused. They were:

(1) The statement made to Insp. Akbal Ahmad (PW9) (Insp. Akbal) on 28 January 1988 under s. 122(6) of the Criminal Proceudre Code (CPC) (the 122(6) statement).

(2) The statement made to Sgt. Tan on 2 and 3 February 1988 under s. 122(5) of the CPC (the 1st 122(5) statement).

(3) The statement made to Sgt. Tan on 29 May 1989 under s. 122(5) of the CPC (2nd 122(5) statement).

(4) The statement made to Sgt. Tan on 2 June 1989 under s. 122(5) of the CPC (the 3rd 122(5) statement).

The admissibility of the 122(6) statement, and the three 122(5) statements were challenged.

The 122(6) Statement

Soon after Sgt. Tan had brought the accused to the CID and placed him in the lock-up at about 2.45 p.m. on 28 January 1988 he requested Insp. Akbal to record the accused's statement under s. 122(6) of the CPC, Insp. Akbal was not the Investigating Officer in this case.

The accused was brought to Insp. Akbal's room at the CID at about 4 p.m. on 28 January 1988 after the usual preliminaries of being examined by a doctor. The certified interpreter Toh Bee Chua (PW10) (Toh) arrived at Insp. Akbal's room at about 4pm. The accused maintains Toh was not introduced to him as the interpreter. He thought Toh was a woman police officer. However he admits that Toh asked him whether he was going to speak in the Cantonese dialect which he affirmed to her. The accused did not object to Toh acting as interpreter.

Insp. Akbal then proceeded to read and explain the typewritten Charge (B) to the accused which Toh interpreted. Insp. Akbal stated in his oral evidence how he explained the charge to the accused. He explained "murder" as being "an unlawful killing". He explained the words "in furtherance of the common intention of them both" as "you both had the same idea to commit murder". He also explained what was meant by the words "unknown person" in the charge. Insp. Akbal's oral evidence was substantially corroborated by Toh although she could not remember the exact words used by Insp. Akbal in explaining the charge. She maintained however that she interpreted both the written words in the written charge as it was read out and the words of explanation of Insp. Akbal to the accused. The accused when he gave

evidence admitted that Toh did interpret what Insp. Akbal read out but maintained that Insp. Akbal had not explained what the charge meant and accordingly Toh could not have interpreted any words of explanation to him.

Insp. Akbal then proceeded to write out the charge in his own hand which was similar to the typewritten charge read and explained to the accused earlier and when he had completed writing it again read it out in English to the accused which Toh interpreted into the Cantonese dialect to the accused. Insp. Akbal in his oral evidence told us that he again gave the same explanation to "murder" and "in furtherance of the common intention" which he had given previously which Toh interpreted to him. When he was satisfied that the accused understood the charge he asked the accused to sign after it which the accused did.

Insp. Akbal then wrote out the notice of warning in the terms of its text in s. 122(6) of the CPC which also as testified to us by Insp. Akbal and Toh was read out and explained in the English by Insp. Akbal and interpreted into the Cantonese dialect by Toh.

The accused in his evidence told us that although he saw Insp. Akbal writing something after the typewritten charge had been read to him (and not interpreted as he maintained) he did not read out what he had written. However he did remember Insp. Akbal say which was interpreted to him by Toh that if he had anything to say he must say it then otherwise he will not have a chance to say it.

When cross-examined the accused prevaricated between saying that he did not understand the charge as the "murder law' was not explained to him to saying that he understood he was being detained and charged for murder to finally admitting that he was given the warning prescribed by s. 122(6) of the CPC and that it was interpreted to him by Toh but not in the exact words of the warning. The accused admitted to understanding simple English.

As for the statement he made the accused firstly admitted that what he said was taken down by Insp. Akbal as interpreted by Toh, that it was read back to him and interpreted by Toh. He admitted that Insp. Akbal had not made any inducement, threat or promise to him but that Sgt.Tan had told him before he was taken to see Insp. Akbal that he was to admit to everything and to co-operate with Insp. Akbal although Sgt. Tan did not tell him what to say word for word. This last being raised for the very first time in cross-examination we believe to be a feeble attempt to prevent the statement from being admitted in evidence.

After the accused had given the statement and when asked whether he wanted to make any corrections, additions or deletions he volunteered a further statement. When questioned on this he denied he had given a further statement but said that he was questioned by Insp. Akbal who wrote down his answers. On this Insp. Akbal however stated in his oral evidence that he had not questioned the accused at any time during the recording of the 122(6) statement. We have no reason not to believe Insp. Akbal.

Defence Counsel conceded that the s.122(6) statement was voluntarily given. His objection was that the charge and the notice of warning had not been explained to the accused. He relied on *PP v. Chan Sway Beng* [1988] 2 MLJ 405 and the evidence of the accused that the charge and the notice of warning were not explained to him.

We find defence Counsel's reliance on *PP v. Chan Sway Beng* misplaced even if it were binding on us which it is not. The totality of Insp. Akbal's evidence and that of Toh which we unreservedly accept shows beyond peradventure that not only were the key words of

the charge and the notice of warning explained and the explanations interpreted to the accused but also that the explaination were more than ample.

We therefore admitted the 122(6) statement (P40). That statement reads as follows:

> I had no intention to kill that person. In fact I did not even know him. Besides, I was only armed with a short metal file. It was Tee Tee who was carrying a 'parang' when we went there. Earlier, Tee Tee and I together with some of his friends had taken some liquor and beer at Bugis Street. During that time, Tee Tee told me that he was going to teach someone a lesson. I think he had conflicts with that person over some fishing matters in Indonesia. He invited me to go along with him. I agreed because then I was a little tipsy and I became annoyed on hearing about that person.

The further statement reads as follows:

> At that time Tee Tee merely said that he was going to teach that person a lesson. He did not say that he was going to kill him. On arrival there, the deceased struggled violently with Tee Tee. As Tee Tee was losing out to him, I went over to help Tee Tee. The deceased was a very strong built person. Compared to him, Tee Tee was pint-sized.

The First 122(5) Statement

On 2 February 1988 Sgt. Tan who had taken over as the investigation officer in this case started recording a statement from the accused at the CID from about 12 noon. Loh Kok Lin, (PW12) (Loh) a certified interpreter was in attendance to interpret to the accused in the Cantonese dialect. The recording was stopped at 1pm for lunch and again at 5 p.m. The recording of the statement was recommenced at 2pm the next day 3 February and completed at about 4.50 p.m. Thereafter, the statement in its entirety was not read back to the accused and interpreted to him by Loh. Some corrections were made which were initialled by the accused. These as testified by Loh were not corrections as to the substance of the statement but to the grammar and the choice of words.

The alleged objection to the admitting of this statement was that in not noting the stopping and starting times of the recording of the statement there was an irregularity. Further it was alleged by the accused that this statement was never read back to him for the simple reason that Loh or any other interpreter was never present at the recording of the statement.

We rejected these allegations made by the accused. We find as a fact that Loh was the interpreter in the recording of the statements.

The 2nd 122(5) Statement

This statement was recorded at Queenstown Remand Prison at the accused's request on 29 May 1989. The accused had asked to see Sgt. Tan on 25 May 1989. Sgt. Tan went with Loh who acted as the interpreter.

Although the accused admits Loh's presence he maintained in his evidence that he was incessantly questioned on his previous statement and what was taken down was not read back to him and interpreted. He had signed the statement again because he was asked to. He does not know what was in the statement but in any case as in the case of the previous statement it had been embellished.

Here again we rejected the accused's evidence. We are satisfied that the accused had voluntarily made this second statement.

The 3rd 122(5) Statement

Sgt. Tan recorded another statement from the accused at Queenstown Remand Prison on 2 June 1989. As before Loh went with him to act as interpreter. The purpose of this statement was to clarify some of the things the accused had said when making the statement on 29 May 1989. The accused did not challenge this statement.

At the end of this part of the case we ruled that the three 122(5) statements be admitted in evidence as we were satisfied that they were voluntarily made by the accused (P70).

It is not necessary to refer to these statements in any detail. It is sufficient to say that the accused admitted to having taken part in the attack on the deceased in the hotel which resulted in his death.

At the close of the prosecution's case, on the evidence we have summarised, we found that the prosecution had made out a *prima facie* case, which, if unrebutted, would warrant the conviction of the accused on the charge he was being tried. We accordingly called upon him to make his defence.

The accused elected to give evidence.

The accused's evidence was in effect an admission of the offence with which he was charged, as the following salient extracts of his evidence show.

In his evidence in chief he said:

> On arrival at a corridor (referring to the corridor on the 4th level of South East Asia Hotel) he (referring to the man with him, Tan Swee Hoon) asked me to carry a bag for him. He knocked on a door (the door of No. 78). The door was opened. Tan Swee Hoon rushed in. I followed him and rushed in. There was a commotion. Can't remember what happened. Someone told me in Cantonese to run away. When I rushed in I can't remember whether I was carrying anything. I ran. Subsequently I tripped. I was carrying the bag when I ran out of the room. Do not know what was inside.
>
> In the room I assaulted the deceased. Can't remember how I assaulted the deceased. I think I carried something. A weapon. Tan Swee Hoon also ran. I followed him. I tripped outside the premises. I believe someone had pulled me down. I strugged and fought back. I only remember I continued running. I hailed a taxi and returned home.

In cross-examination he said:

> On arrival Tan Swee Hoon handed me the parang ... The parang was given to me by Tan Swee Hoon before he knocked on the door. I had the parang in my hand. Did not see what Tan Swee Hoon held in his hand. I assume Tan Swee Hoon was armed with a file. He told me so afterwards when he returned to Neil Road and we talked about what happened in the hotel.

When he was confronted with a portion of the 2nd 122(5) statement he admitted it.

It reads:

> When Tan Swee Hoon knocked on the door, I withdrew the parang from the bag which I was carrying and prepared myself for the attack. When I noticed that the occupant was trying to close the door back I quickly pushed the door and tried to stop the occupant from closing it. Tan Swee Hoon also joined me almost at the same time. Tan Swee Hoon and I managed to force open the door and rushed into the room. Immediately after entering the room I started to attack the occupant with the parang. Though it was dark inside the room but I could still notice that the occupant was a male person with a slightly plump figure. I slashed him a few

time with the parang. During the attack that male person tried to ward off the blows with his arm and at the same time tried to snatch the parang away from me. After a brief struggle, I was pushed down to the bed by that person.

Before I could get up that person ran to where Tan Swee Hoon was. In actual fact, Tan Swee Hoon was just one or two steps away from where I was. I immediately got up and started to attack that male person with the parang again. During the attack, I heard a female voice screaming and shouting 'Robbery, Robbery' in the same room either in Teochew or Hokkien dialect. I did not try to find out where the female was exactly at inside the room because I was then concentrating in the attacking of the male occupant. The male person again put up another struggle with me. At this juncture I heard Tan Swee Hoon shouted to me to 'run' from the corridor. I suddently realised that Tan Swee Hoon was no longer inside the room but was at the corridor instead. I quickly ran out of the room.

...

Having heard submissions at the close of the case we were satisfied beyond a reasonable doubt that the accused together with Tan Swee Hoon (who is still at large) went to the South East Asia Hotel to teach the deceased a lesson. For this purpose the accused was armed with a parang and the other person with a pointed three sided metal file. Together they entered the deceased's room at the hotel and savagely attacked him. The slash wounds and in particular the fatal stab wounds inflicted by the two of them caused severe bodily injuries to the deceased. These injuries were sufficient in the ordinary course of nature to cause the death of the deceased and did in fact do so.

In the result we find the accused guilty in that together with Tan Swee Hoon and in the furtherance of the common intention of them both caused bodily injuries to Nurdin Nguan Song (the deceased) at the South East Asia Hotel which resulted in his death.

We accordingly convict the accused on the charge.

Also found at [1990] 2 CLJ 503